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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,820	12/05/2003	Antonin A. Meibock	KORH-1-1003	8554
25315	7590	04/19/2005	EXAMINER	
BLACK LOWE & GRAHAM, PLLC 701 FIFTH AVENUE SUITE 4800 SEATTLE, WA 98104			KAVANAUGH, JOHN T	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/729,820

Applicant(s)

MEIBOCK, ANTONIN A.

Examiner

Ted Kavanaugh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2005.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-80 is/are pending in the application.  
4a) Of the above claim(s) 17,19,21,26,36,38-40,44,45,62,64-66,70,71 and 80 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-10,14-16,18,20,22-25,27-29,33-35,37,41-43,46-55,59-61,63,67-69 and 72-79 is/are rejected.  
7) ☒ Claim(s) 11-13,30-32 and 56-58 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 17,19,21,26,36,38,39,40,44,45,62,64-66,70,71 and 80 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on March 28, 2005.
2. Applicant's election without traverse of Species I (figure 2A),III (figure 5)and V (figures 3-4) in the reply filed on March 28, 2005 is acknowledged.

### *Claim Rejections - 35 USC § 112*

3. Claims 1-16,18,20,22-25,27-35,37,41-43,46-61,63,67-69 and 72-73 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The scope of the claims is not clear. Each of the independent claims (i.e. 1 and 27), claim an "apparatus" and recite the footwear item as intended use. However, throughout the body of these claims and the other independent claims, the footwear item is being defined by the apparatus and therefore the claims are unclear and indefinite. It would appear applicant intends to claim the combination of the footwear and the securing apparatus and therefore the claims should be clarified as such. **The claims will be treated below as if applicant intended to claim the combination.**

Applicant refers to the tongue as a closure throughout the specification and claims. A tongue is not usually referred to a closure and therefore this leads to

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confusion throughout the claims since other closures are also claimed. It is suggested applicant change the closures that are referring to the tongue to be changed as such so the claims will be definite.

In claims 2 and 48, they appear inaccurate because the force member (strap 152) doesn't extend "beneath the surface of the footwear item".

Claim 3 is unclear and indefinite. The removable force member (strap 152) doesn't extend beneath the surface of the footwear and curve around the pivot slot.

Claims 4 and 49 are indefinite. There is only taught one pivot slot on each side of the shoe upper. It is not clear what applicant is referring to by "a pair of pivot slots in the surface of the footwear item".

In claim 20, the distribution panel (550) in the elected embodiment is not removable and therefore the claim is unclear.

In claims 22-25,41,42,43 and 67-67, it is not clear how these claims further defines applicant's invention inasmuch as the fastener has only been functionally recited and not positively claimed in combination.

In claims 24 and 43, "the first closure line" is unclear and indefinite since there is no proper antecedent basis. Moreover, it is further defining the fastener which has only been functionally recited.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1,5-10,22,23,24,25,27-28,41,42,43,46,50-55,67,68,69,72-77 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6073370 (Okajima).

Okajima teaches footwear having a securing apparatus as claimed (see figures 13-17) including pivot members including rings (15) mounted on the footwear, a securing device having a strap member (122) with a plurality of end sections configured to curve around the rings and including a fastener receiving opening (130) to engage a lace fastener (L). Straps 111a,111b serve as the "heel strap" and "Achilles strap"; and also serve as the "retaining mechanism".

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2,3,4,47,48,49 rejected under 35 U.S.C. 103(a) as being unpatentable over Okajima '370 in view of US 5992057 (Monti).

Okajima teaches footwear and a securing apparatus as claimed (see the rejection above) except for the slit in the surface of the upper. Monti teaches footwear and a securing apparatus having a slit (134) to secure the strap in position. It would have been obvious to provide the footwear of Okajima with a slit, as taught by Monti, to

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secure the straps in position. Regarding claims 4 and 49, as understood, there is more than one strap and therefore there is at least a pair of pivot slots

8. Claims 14-16,18,20,33-35,37,59-61 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okajima '370 in view of US 6839985 (Bettiol).

Okajima teaches footwear as claimed except for a force distribution plate being semi-rigid and integral with the closure. Bettiol teaches a force distribution plate (reinforcement 16) being semi-rigid (see col. 4, line 25) and integral (see col. 4, lines 15-20) with the closure (the tongue). It would have been obvious to provide the footwear of Okajima with a plate, as taught by Bettiol, to protect the front face of the footwear. Regarding being removable, the reinforcement can be physically removed from the tongue.

9. Claims 29,78-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okajima '370 in view of US 3456366 (Boeing).

Okajima teaches footwear and a removable securing device as claimed except retaining device or a plurality of guides. Boeing teaches footwear having a plurality of retaining device/guides (17,19) to hold the strap in place. It would have been obvious to provide the footwear of Okajima, with a plurality of retaining devices/guides (17,19) to hold the strap in place.

***Allowable Subject Matter***

10. Claims 11-13,30-32,56-58 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action, by the

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addition of suitably specific language, and to include all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

**11. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including:**

**-“The reply must present arguments pointing out the *specific* distinctions believed to render the claims, including any newly presented claims, patentable over any applied references.”**

**--“A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.”**


**-Moreover, “The prompt development of a clear issue requires that the replies of the applicant meet the objections to and rejections of the claims. Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06” MPEP 714.02. The “disclosure” includes the claims, the specification and the drawings.**

**12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at [www.uspto.gov](http://www.uspto.gov).**

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (703) 872-9306 **(FORMAL FAXES ONLY)**. Please identify Examiner Ted Kavanaugh of Art Unit 3728 at the top of your cover sheet.

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Any inquiry concerning the MERITS of this examination from the examiner should be directed to Ted Kavanaugh whose telephone number is (571) 272-4556. The examiner can normally be reached from 6AM - 4PM.



Ted Kavanaugh  
Primary Examiner  
Art Unit 3728

TK  
April 13, 2005